Supreme Court, U.S.
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No. 85-271

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

State of California,

Petitioner,

vs.

Walnut Properties, Inc.
and Vincent Miranda,

Respondents.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

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Counsel for Respondents

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Opposition to Petition

The Petition for Writ of Certiorari is meritless and should be dismissed as frivolous.

Four Courts of Appeal of the State of California have narrowly defined the term "adult motion picture theater" as used in ordinances regulating "adult businesses."

0626A Sys./0042A Arch.

Pringle v. City of Covina, 115 Cal.App.3d 151 (1981); Kuhns v. Bd. of Supervisors, 128 Cal.App.3d 369 (1982); Strand Property Corp. v. Municipal Court, 148 Cal.App.3d 882 (1983); City of Whittier v. Walnut Properties, Inc., 149 Cal.App.3d 633 (1983). These cases hold that in order for a theater to be deemed an "adult motion picture theater" within the meaning of an "adult business" zoning ordinance, a preponderance of the films shown by the motion picture theater must have as a dominant theme the depiction of the ordinance's enumerated sexual activities.

The court below, the Appellate Department of the Superior Court of the County of Los Angeles, State of California is inferior in jurisdiction to the Court of Appeal of the State of California and was bound by California law to follow the law, as found by the Courts of Appeal. Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450 (1962). See Appendix A, p. 18.

CONCLUSION

Since the case was decided on adequate state grounds the Petition should be denied.

Respectfully submitted,

Stanley Fleishman, A
Professional Corporation

By: Stanley Fleishman
STANLEY FLEISHMAN
Attorney for
Respondents

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, Suite 3160, Los Angeles, California 90067.

On September 12, 1985, I served the foregoing document described as Opposition To Petition For A Writ of Certiorari To The Appellate Department Of The Superior Court, County of Los Angeles, State of California on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California addressed as follows:

John Anthony Vander Lans
City Prosecutor
Robert Roy Recknagel
Assistant City Prosecutor
Gerry Lee Ensley
Deputy City Prosecutor
400 West Broadway
Suite 207
Long Beach, California 90802

Executed on September 12, 1985, at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Vicki S. Butler

VICKI S. BUTLER